IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 463 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Sri Raman Chopra, S/o Sri Banarsidas, R/o Village Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO. 464 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Sri Ram Krishna Pokhariyal, S/o Sri Mukundram, R/o Village Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).

5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil-Kotdwar, District Pauri Garhwal.

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.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Sri Purnamal, S/o Sri Kishan Lal, R/o Village Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO, 466 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.

2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Smt. Vimla Pokhariyal, S/o Sri Ramkrishna Pokhariyal, R/o Village Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO, 467 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Smt. Savitri Devi, W/o Sri Vishwanath, R/o Village Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1 Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

Dated: 18.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.B. Singh, Advocate for the petitioner and standing Counsel for the respondents no. 1 and 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 16th February, 2005 (Annexure No. 20 to the writ petitions) passed by the respondent no. 1 i.e. District Judge, Pauri Garwhal and to restore the order dated 18.11.2002 (Annexure No. 19 to the writ petitions) passed by the respondent no.2.

A perusal of the appellate order shows that the appeal has been allowed only on the ground that the proceedings for cancellation of the lease deed is pending in appeal before the Commissioner, Garhwal Mandal, Pauri.

Briefly stated, that proceedings under section 4/5 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, were initiated on the basis of Challani report of the Patwari Pauri stating therein that the respondents are unauthorized occupant and are liable to be evicted in the aforesaid proceedings. As will appear from the report that Halka Patwari went to the spot and he found the illegal possession of the respondents over the land in question and accordingly, prepared a map, extract of Khasra and Khatauni at the spot.

According to the petitioner, the land has been recorded in the name of the U.P. Government now the State of Uttaranchal. On the basis of the aforesaid Challani report, a notice was issued u/s 4(1) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act requiring the respondents to show cause with regard to the unauthorized occupation. The occupant has filed the reply denying the fact that he is in illegal occupation.

The Prescribed Authority has passed the order on 11.08.1950 by observing that the lease was granted in favour of the Geeta Bhawan and the Geeta Bhawan having violated the terms and conditions and thereafter on 21.09.1988, the lease in favour of the Bharat Sadhu Samaj was cancelled and the same has bested with the State Government. Following order was passed by the prescribed authority in the case of Smt. Sawitri Devi:-

''उपर्युक्त विवेचन से स्प ट है कि ग्राम जौंक पट्टी उदयपुर तल्ला तहसील कोटद्वार, जिला पौड़ी के खेत नं0 63 मध्ये प्रश्नगत भूमि जिसका रकवा 7ग्7त्र49 वर्ग मीटर जो उ0प्र0 सरकार के नाम पर बगड़ दर्ज है, पर प्रतिवादी संख्या – 2 भारत साधू समाज ने गीता भवन उन्हें लीज पर स्वीकृत भूमि को अवैधानिक रूप से 1960 में प्राप्त कर उस भवन/दुकान का निर्माण कर कब्जा किया हुआ है। प्रतिवादी संख्या–2 द्वारा दुकान प्रतिवादी संख्या–1 दुकान पर दुकानदार भारत साधू समाज के किराये दार के रूप में काबिज है। प्रतिवादी संख्या–3 सुखदेवानन्द ट्रस्ट परमार्थ निकेतन का प्रश्नगत भवन/दुकान पर प्रत्यक्ष अथवा परोक्ष कब्जा नहीं पाया गया है।

आदेश

उपर्युक्त विवेचना के आधार पर अवैध अध्यासी संख्या–1 विश्वनाथ पुत्र झााबरमल निवासी ग्राम जौंक (स्वर्गाश्रम) पट्टी उदयपुर तल्ला तहसील कोटद्वार (जो किरायेदार के रूप में दुकान पर काबिज है) प्रतिवादी संख्या–2 भारत साधु समाज द्वारा प्रबन्धक (जो प्रशनगत भवन/दुकान के स्वामी हैं) तथा अवैध अध्यासी संख्या .3, सुखदेवानन्द ट्रस्ट परमार्थ निकेतन द्वारा मैनेजिंग ट्रस्टी (प्रश्नगत भूमि दुकान में जो भी हित निहित है) को इस न्यायालय द्वारा सार्वजनिक भूगृहादि अधिनियम–1972 की धारा–4 (1) के तहत कमशः दिनांक 2.11.98, 26.8.2000 एवं दिनांक 27.01.2001 को जारी नोटिसों को अन्तिम किया जाता है। तथा उन्हें ग्राम जौंक (स्वर्गाश्रम) के खसरा नम्बर –63 को 7ग्7त्र49 वर्ग मीटर भूमि से बेदखल किया जाता है। तद्नुसार प्रपत्र–ख जारी हो बाद आवश्यक कार्यवाही के पत्रावली अभिलेखगार में संचित हो।''

Three separate appeals were preferred by the respondent no.3, respondent no. 4 and the state.

The appeals were allowed with the observation that the Commissioner Garhwal Mandal has already stayed the order passed by the District Magistrate cancelling the lease.

In view of the aforesaid , the matter is sent back to the District Judge for deciding the appeals afresh after awaiting the result of the proceedings with regard to the cancellation of the lease.

Subject to the aforesaid, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J)

18.05.2006
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